

## §216.5

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(2) Information or alerts on military visits are not distributed at least on par with nonmilitary recruiters since schools offering such services to nonmilitary recruiters must also send e-mails, post notices, etc., on behalf of the military recruiter to comply with the Solomon Amendment;

(3) Military recruiters are prohibited from scheduling their visits at requested times that coincide with nonmilitary recruiters' visits to its campus if this results in a greater level of access for other recruiters than for the military as schools must ensure their recruiting policy operates in such a way that military recruiters are given access to students equal to that provided to any other employer;

(4) Military recruiters do not receive a mainstream recruiting location amidst nonmilitary employers to allow unfettered access to interviewees since military recruiters must be given the same access as recruiters who comply with the school's nondiscrimination policy;

(5) The school has failed to enforce time, place, and manner policies established by that school such that military recruiters experience an unsafe recruiting climate, as schools must allow military recruiters on campus and must assist them in whatever way the school chooses to assist other employers;

(6) Evidence is discovered of an institution-sponsored policy or practice that in effect denied students permission to participate, or prevented students from participating in recruiting activities.

(7) The costs being charged by the school for providing student-recruiting information are believed by the military recruiter to be excessive, and the school does not provide information sufficient to support a conclusion that such are the actual costs, provided that they are reasonable and customary, and are identical to those costs charged to other employers; or

(8) The covered school is unwilling to declare in writing, in response to an inquiry from a representative of a DoD Component or a representative from the Department of Homeland Security, that the covered school does not have a policy or practice of prohibiting, or in

effect preventing, the Secretary of a Military Department or Secretary of Homeland Security from the same access to campuses or access to students on campuses provided to nonmilitary recruiters, or access to student-recruiting information by military recruiters for purposes of military recruiting.

(e) An evaluation to determine whether a covered school has an anti-ROTC policy covered by paragraph (a)(7) of this section shall be undertaken when:

(1) A Secretary of a Military Department or designee cannot obtain permission to establish, maintain, or efficiently operate a unit of the Senior ROTC; or

(2) Absent a Senior ROTC unit at the covered school, students cannot obtain permission from a covered school to participate, or are effectively prevented from participating, in a unit of the Senior ROTC at another institution of higher education.

### §216.5 Responsibilities.

(a) The PDUSD(P&R), under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 45 days after receipt of the information described in paragraphs (b)(3) and (c)(1) of this section:

(i) Inform the Office of Naval Research (ONR) and the Director, Defense Finance and Accounting Service that a final determination will be made so those offices can make appropriate preparations to carry out their responsibilities should a covered school be determined ineligible to receive federal funds.

(ii) Make a final determination under 10 U.S.C. 983, as implemented by this part, and notify any affected school of that determination and its basis, and that the school is therefore ineligible to receive covered funds as a result of that determination.

(iii) Disseminate to Federal entities affected by the decision, including the DoD Components and the GSA, and to the Secretary of Education and the head of each other department and agency the funds of which are subject to the determination, the names of the affected institutions identified under paragraph (a)(1)(ii) of this section.

(iv) Notify the Committees on Armed Services of the Senate and the House of Representatives of the affected institutions identified under paragraph (a)(1)(ii) of this section.

(v) Inform the affected school identified under paragraph (a)(1)(ii) of this section that its funding eligibility may be restored if the school provides sufficient new information that the basis for the determination under paragraph (a)(1)(ii) of this section no longer exists.

(2) Not later than 45 days after receipt of a covered school's request to restore its eligibility:

(i) Determine whether the funding status of the covered school should be changed, and notify the applicable school of that determination.

(ii) Notify the parties reflected in paragraphs (a)(1)(i), (a)(1)(iii), and (a)(1)(iv) of this section when a determination of funding ineligibility (paragraph (a)(1)(ii) of this section) has been rescinded.

(3) Publish in the FEDERAL REGISTER each determination of the PDUSD(P&R) that a covered school is ineligible for contracts and grants made under 10 U.S.C. 983, as implemented by this part.

(4) Publish in the FEDERAL REGISTER at least once every 6 months a list of covered schools that are ineligible for contracts and grants by reason of a determination of the Secretary of Defense under 10 U.S.C. 983, as implemented by this part.

(5) Enter information into the Excluded Parties List System<sup>1</sup> about each covered school that the PDUSD(P&R) determines to be ineligible for contracts and grants under 10 U.S.C. 983 and/or this part, generally within 5 days of making the determination.

(6) Provide ONR with an updated list of the names of institutions identified under paragraph (a)(1)(ii) of this section whenever the list changes due to

an institution being added to or dropped from the list, so that ONR can carry out its responsibilities for post-award administration of DoD Components' contracts and grants with institutions of higher education.

(7) Provide the Office of the Deputy Chief Financial Officer, DoD, and the Director, Defense Finance and Accounting Service with an updated list of the names of institutions identified under paragraph (a)(1)(ii) of this section whenever the list changes due to an institution being added or dropped from the list, so those offices can carry out their responsibilities related to cessation of payments of prior contract and grant obligations to institutions of higher education that are on the list.

(8) Publish in the FEDERAL REGISTER the list of names of affected institutions that have changed their policies or practices such that they are determined no longer to be in violation of 10 U.S.C. 983 and this part.

(b) The Secretaries of the Military Departments and the Secretary of Homeland Security shall:

(1) Identify covered schools that, by policy or practice, prohibit, or in effect prevent, the same access to campuses or access to students on campuses provided to nonmilitary recruiters, or access to student-recruiting information by military recruiters for military recruiting purposes.

(i) When requests by military recruiters to schedule recruiting visits are unsuccessful, the Military Service concerned, and the Office of the Secretary of Homeland Security when the Coast Guard is operating as a service in the Department of Homeland Security, shall seek written confirmation of the school's present policy from the head of the school through a letter of inquiry. A letter similar to that shown in Appendix A of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30

<sup>1</sup>The Excluded Parties List System (EPLS) is the system that the General Services Administration maintains for Executive Branch agencies, with names and other pertinent information of persons who are debarred, suspended, or otherwise ineligible for Federal procurement and/or covered non-procurement transactions.

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days to accompany the submission to the PDUSD(P&R).

(ii) When a request for student-recruiting information is not fulfilled within a reasonable period, normally 30 days, a letter similar to that shown in Appendix A shall be used to communicate the problem to the school, and the inquiry shall be managed as described in §216.5.(b)(1)(ii). Schools may stipulate that requests for student-recruiting information be in writing.

(2) Identify covered schools that, by policy or practice, deny establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or deny students permission to participate, or effectively prevent students from participating in a unit of the Senior ROTC at another institution of higher education. The Military Service concerned, and the Office of the Secretary of Homeland Security when the Coast Guard is operating as a service in the Department of Homeland Security, shall seek written confirmation of the school's policy from the head of the school through a letter of inquiry. A letter similar to that shown in Appendix B of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the submission to the PDUSD(P&R).

(3) Evaluate responses to the letter of inquiry, and other such evidence obtained in accordance with this part, and submit to the PDUSD(P&R) the names and addresses of covered schools that are believed to be in violation of policies established in §216.4. Full documentation shall be furnished to the PDUSD(P&R) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies.

(c) The Heads of the DoD Components and Secretary of Homeland Security shall:

(1) Provide the PDUSD(P&R) with the names and addresses of covered schools identified as a result of evaluation(s) required under §216.4(d) and (e).

(2) Take immediate action to deny obligations of covered funds to covered schools identified under paragraph (a)(1)(ii) of this section, and to restore eligibility of covered schools identified under paragraph (a)(2) of this section.

### §216.6 Information requirements.

The information requirements identified at §216.5(b) and (c)(1) have been assigned Report Control Symbol DD-P&R-(AR)-2038 in accordance with DoD 8910.1-M<sup>2</sup>.

#### APPENDIX A TO PART 216—MILITARY RECRUITING SAMPLE LETTER OF INQUIRY

(Tailor letter to situation presented)

Dr. John Doe,

*President, ABC University, Anywhere, USA*  
12345-9876.

Dear Dr. Doe: I understand that military recruiting personnel [have been unable to recruit or have been refused student-recruiting information<sup>3</sup> at (subelement of) ABC University)] by a policy or practice of the school. Specifically, military recruiting personnel have reported [here state policy decisions or practices encountered]. [If preliminary information coming to the attention of a Military Service indicates that other Military Services' recruiting representatives have been similarly informed of the policy or experienced a similar practice affecting their ability for military recruiting purposes to have the access or information require, so state.]

Current Federal law (10 U.S.C. 983) denies the use of certain Federal funds through grants or contracts, to include payment on such contracts or grants previously obligated, (excluding any Federal funding to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance) from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies to institutions of higher education

<sup>2</sup>Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

<sup>3</sup>Student-recruiting information refers to a student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major(s).